

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Bankruptcy Court
Southern District of Texas
FILED
SEP 19 2003
Michael N. Milby, Clerk

UNITED STATES OF AMERICA

vs.

LEWIS GOTTLIEB,
Defendant

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CRIMINAL NO. H-03-369
18 U.S.C. § 371
18 U.S.C. § 1347
42 U.S.C. § 1320a-7b(b)(1)(A)
18 U.S.C. § 982(b)(1)

CRIMINAL INFORMATION

THE UNITED STATES ATTORNEY CHARGES:

COUNT ONE
(Conspiracy – 18 U.S.C. § 371)

A. INTRODUCTION

At all times material to this Information:

THE MEDICARE PROGRAM

1. The Medicare Program ("Medicare") was a federally funded health insurance program that provided health care benefits to certain individuals, primarily the elderly, blind, and disabled. Medicare was administered by the Centers for Medicare and Medicaid Services (CMS) an agency of the United States Department of Health and Human Services (HHS), formerly known as the Health Care Financing Administration ("HCFA"). Individuals who received benefits under Medicare were often referred to as Medicare "beneficiaries."
2. Medicare was a "health care benefit program" as defined by Title 18, United States Code, Section 24(b).
3. Medicare Part B helped pay for certain physician services, outpatient services,

and other services, including durable medical equipment ("DME"), that were medically necessary and were ordered by licensed medical doctors or other qualified health care providers. DME is equipment that is designed for repeated use and for a medical purpose, such as an electric or motorized wheelchair, also known as a "power wheelchair."

4. HHS through CMS, contracted with TrailBlazer Health Enterprises, LLC located in Dallas, Texas to process claims submitted by physicians and others health care providers.

DME Suppliers and Medicare Billing Procedures

5. In order to bill Medicare for DME equipment, a DME supplier had to be an approved Medicare supplier. The DME supplier obtained this approval by submitting an application to HCFA. If the supplier met certain minimum qualifications, Medicare approved the application. The DME supplier was issued a unique identification number called a "supplier number." The DME supplier was then able to submit bills, known as "claims," for payment to Medicare for the cost of DME supplied to beneficiaries.

6. Medicare permitted approved DME suppliers to submit Medicare claims on paper claim forms or electronically, such as through the use of computers. Medicare required that claims contain the following: the beneficiary's name and Medicare identification number; the name and unique identification number of the doctor who ordered the item or service; the item or service that was provided by the supplier; the date of service; and the charge for the item or service.

7. In Texas, Medicare Part B was administered by Palmetto Government Benefits Administrators, which had entered into a contract with the United States Department of Health and Human Services and CMS to serve as the entity or "carrier" that received, processed, and

paid Medicare claims for DME, including those relating to power wheelchairs.

The Medicaid Program

8. The Medicaid program is a state-administered health insurance program funded predominantly by the United States Government and administered by the State of Texas. The Medicaid program helps pay for reasonable and necessary medical procedures and services provided to individuals who are deemed eligible under state low-income programs. The Texas Medicaid Program is a cooperative federal-state program which furnishes medical assistance to the indigent. Among the types of reimbursable medical assistance available to covered persons are DME and supplies.

9. The State of Texas contracts with the National Heritage Insurance Company (NHIC) to process and pay claims submitted by health care providers.

10. Upon assignment of a Medicaid provider number to a health care provider, the current Texas Medicaid Provider Procedures manual is distributed to the provider. Subsequent to that, NHIC mails to the provider all Texas Medicaid Bulletins, which includes updates to the procedure manual distributed by NHIC. The procedure manual, bulletins and updates contain the rules and regulations pertaining to services covered by Medicaid and how to appropriately bill for providing these services to recipients.

11. The Medicaid Program in Texas may pay a portion of a claim originally submitted to Medicare in the event the patient has both Medicare and Medicaid coverage. This portion is generally twenty percent of the Medicare allowance for the billed charge. Medicaid will pay its portion if Medicare originally allowed the claim. If a Medicaid recipient is not also a Medicare beneficiary, the claims may be submitted directly to Medicaid. The guidelines regarding

payment of these claims are contained in the Provider Procedures manual given to DME providers upon enrollment in the Medicaid Program and are similar to Medicare guidelines.

12. Medicaid regulations required that a provider document every service rendered to a patient for which a claim is submitted to Medicare and/or Medicaid. This documentation is part of the patient's medical records and must be retained by the provider for a period of not less than (5) years.

Power Wheelchairs and Certificates of Medical Necessity ("CMN")

13. Under Medicare rules, Medicare Part B would pay for the cost of a power wheelchair and accessories supplied to a beneficiary when the beneficiary had a serious, long-term medical or physical condition; a power wheelchair was medically necessary for the beneficiary; the beneficiary could not operate a manual (non-motorized) wheelchair; and the beneficiary was capable of safely operating the controls for a power wheelchair. To be eligible to receive a power wheelchair, Medicare rules required that a beneficiary exhibit severe weakness of the upper extremities and be unable to walk over long periods of time.

14. In order for a DME supplier to be paid for providing a power wheelchair and accessories to a beneficiary, Medicare required the supplier to obtain documentation that the wheelchair was medically necessary. A specific document, called the HCFA Form 843, was required to establish medical necessity. In the HCFA Form 843, also known as a Certificate of Medical Necessity ("CMN"), the Medicare beneficiary's treating doctor was required to set forth the medical necessity for the power wheelchair. Among other matters, the doctor was required to certify that the beneficiary had severe weakness of the upper extremities due to a neurologic, muscular, or cardiopulmonary disease or condition, and that the beneficiary was unable to

operate any type of manual wheelchair. The doctor was also required to sign the CMN after attesting that he or she was the beneficiary's treating physician and the medical necessity information was true, accurate, and complete.

15. The CMN included a section that described the power wheelchair and accessories that were ordered by the beneficiary's treating doctor and contained the DME supplier's charge for these items. This section of the CMN formed the basis for the bill that the DME supplier would send to Medicare in order to be paid for the cost of the power wheelchair and accessories.

16. A DME supplier who billed Medicare for the cost of a power wheelchair and accessories was required to submit the completed and signed CMN. If the claim was submitted electronically, then all of the information from the CMN was required to be submitted electronically.

DEFENDANT

17. LEWIS GOTTLIEB, defendant herein, was licensed by the Texas State Board of Medical Examiners for the State of Texas as a medical doctor and specialized in treating individuals suffering from mental and emotional problems.

18. Defendant, LEWIS GOTTLIEB, was the owner of a medical clinic which operated at 154 North Sam Houston Parkway, Houston, Texas and 505 North Sam Houston Parkway, Suite 150, Houston, Texas at various times.

RELATED DME COMPANIES

19. 1st Choice Medical Equipment and Supply ("1st Choice") was a DME supply company that was established on or about June 7, 2002 as a DME supplier, with an emphasis on supplying power wheelchairs. 1st Choice was located in Houston, Texas, where it remained until

Medicare revoked their supplier number on or about June 6, 2003, when the company stopped conducting business.

20. Thurman Family Medical Supply ("Thurman") was a DME supply company that was established on or about May 30, 2002 as a DME supplier, with an emphasis on supplying power wheelchairs. Thurman was located in Houston, Texas, where it remained until Medicare suspended payments on or about April 30, 2003, when the company stopped conducting business.

21. Senior's Comfort Care Medical Supply ("Senior's") was a DME supply company that was established on or about May 30, 2002 as a DME supplier, with an emphasis on supplying power wheelchairs. Senior's was located in Houston, Texas, where it remained until Medicare suspended payments on or about April 1, 2003, when the company stopped conducting business.

22. Access Medical Supply ("Access") was a DME supply company that was established on or about January 13, 2001 as a DME supplier, with an emphasis on supplying power wheelchairs. Access was located in Stafford, Texas, where it remained until Medicare suspended payments on or about May 29, 2003.

23. From in or about October 2001 and continuing through May 2003, LEWIS GOTTLIEB, and others known to the United States Attorney fraudulently billed Medicare and Medicaid approximately \$52 million and were paid approximately \$30 million for services and equipment claimed to have been medically necessary for the health and well-being of Medicare and Medicaid beneficiaries when the defendant knew such services and equipment were not medically necessary.

B. THE CONSPIRACY

24. Beginning in or about October 2001, the exact time being unknown to the United States Attorney, and continuing thereafter to in or about May 2003, in the Houston Division of the Southern District of Texas and elsewhere, the defendant,

LEWIS GOTTLIEB,

did knowingly, intentionally, and willfully combine, conspire, confederate and agree with other persons known and unknown to the United States Attorney to commit and aid and abet in the commission of certain offenses against the United States:

- a. To violate the Health Care Fraud statute, that is, to knowingly and willfully execute and attempt to execute, a scheme and artifice: (1) to defraud a health care benefit program; namely the Medicare program; and (2) to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, a health care benefit programs, namely, Medicare and Medicaid; in connection with the delivery of and payment for health care benefits, items and services, in violation of Title 18, United States Code Section 1347;
- b. To violate the Anti-Kickback statute by knowingly and willfully offering and paying any remuneration (including any kickback) directly and indirectly, overtly and covertly, in cash and in kind to induce the referral of Medicare beneficiaries for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole and in part under the Medicare and Medicaid programs, in violation of Title 42 U.S.C. §1320a-7b(b)(1)(A); that is, to

receive payment for referring Medicare and Medicaid patients.

C. OBJECT OF THE CONSPIRACY

25. It was the object of the conspiracy that the defendant and others known to the United States Attorney unlawfully enriched themselves by falsely and fraudulently representing that the conditions of Medicare and Medicaid beneficiaries were such that a power wheelchair was medically necessary when in fact the defendant well knew the beneficiaries did not suffer from such conditions and did not qualify to receive a power wheelchair under Medicare and Medicaid rules.

D. MANNER AND MEANS

The manner and means of the conspiracy included, but were not limited to, the following:

26. The defendant would and did cause Medicare and Medicaid to be billed for evaluations of Medicare beneficiaries and for providing DME, namely power wheelchairs and accessories, as if they were required, by falsely representing that:

- 1) the beneficiaries' medical conditions were such that without the use of a power wheelchair, the beneficiaries would otherwise be bed or wheelchair-confined;
- 2) the beneficiaries' medical conditions rendered them incapable of operating a manual wheelchair; and
- 3) the beneficiaries suffered from a neurologic or muscular disease or condition that resulted in severe weakness of the upper extremities.

27. The defendant would and did enroll in the Medicare and Medicaid program as a health care provider.

28. The defendant would and did perform evaluations of Medicare and Medicaid beneficiaries who were brought to his clinic by recruiters who worked for DME companies.

29. The defendant would and did perform evaluations, including psychiatric services, sign CMN's and prescribe power wheelchairs for Medicare and Medicaid beneficiaries in exchange for receiving kickbacks from DME companies when in fact he well knew they did not qualify for such equipment under Medicare and Medicaid rules.

30. The defendant would and did require Medicare and Medicaid beneficiaries to sign a form indicating they were in need of and had received psychiatric services when in fact the defendant well knew they did not need or receive such services.

31. The defendant would and did require Medicare and Medicaid beneficiaries to sign the form as a precondition to issuing a prescription authorizing them to receive a power wheelchair.

32. The defendant would and did bill Medicare and Medicaid for providing psychiatric services to Medicare and Medicaid beneficiaries when in fact the defendant well knew such services had not been provided.

OVERT ACTS

33. In furtherance of the conspiracy and to effect the objects thereof, the following Overt Acts, among others, were committed in the Southern District of Texas:

(1) On or about June 18, 2002, defendant LEWIS GOTTLIEB caused to be submitted a claim to Medicare for a psychiatric evaluation that was performed as a result of a referral of a patient for medical services that were not medically necessary.

(2) On or about June 18, 2002, defendant LEWIS GOTTLIEB caused to be submitted a claim to Medicaid for a psychiatric evaluation that was performed as a result of a referral of a patient for medical services that were not medically necessary.

(3) On or about June 18, 2002, defendant LEWIS GOTTLIEB caused to be submitted

a claim to Medicare for a power wheelchair and accessories as a result of a referral of a patient for medical services that were not medically necessary.

(4) On or about June 18, 2002, defendant LEWIS GOTTLIEB received a \$200.00 kickback from Access Medical Supply in exchange for his signing a CMN approving and authorizing a beneficiary to receive a power wheelchair.

(5) On or about October 15, 2002, defendant LEWIS GOTTLIEB caused to be submitted a claim to Medicare for a psychiatric evaluation that was performed as a result of a referral of a patient for medical services that were not medically necessary.

(6) On or about October 15, 2002, defendant LEWIS GOTTLIEB caused to be submitted a claim to Medicare for a power wheelchair and accessories as a result of a referral that were not medically necessary.

(7) On or about October 15, 2002, defendant LEWIS GOTTLIEB received a \$200.00 kickback from Senior's in exchange for his signing a CMN approving and authorizing a beneficiary to receive a power wheelchair.

(8) On or about November 5, 2002, defendant LEWIS GOTTLIEB caused to be submitted a claim to Medicare for a psychiatric evaluation that was performed as a result of a referral of a patient for medical services that were not medically necessary.

(9) On or about November 5, 2002, defendant LEWIS GOTTLIEB caused to be submitted a claim to Medicare for a power wheelchair and accessories as a result of a referral that were not medically necessary.

(10) On or about November 5, 2002, defendant LEWIS GOTTLIEB received a \$200.00 kickback from Thurman in exchange for his signing a CMN approving and authorizing a

beneficiary to receive a power wheelchair.

(11) On or about November 6, 2002, defendant LEWIS GOTTLIEB caused to be submitted a claim to Medicare for a psychiatric evaluation that was performed as a result of a referral of a patient for medical services that were not medically necessary.

(12) On or about November 6, 2002, defendant LEWIS GOTTLIEB caused to be submitted a claim to Medicare for a power wheelchair and accessories as a result of a referral that were not medically necessary.

(13) On or about November 6, 2002, defendant LEWIS GOTTLIEB received a \$200.00 kickback from 1st Choice in exchange for his signing a CMN approving and authorizing a beneficiary to receive a power wheelchair.

COUNTS TWO THROUGH FIVE
(Health Care Fraud-Durable Medical Equipment)
18 U.S.C. § 1347

1. The United States Attorney realleges paragraphs 1 through 23 and 26 through 32 of Count One above and incorporates them herein.

Purpose of the Scheme to Defraud

2. It was the purpose of the scheme to defraud to fraudulently obtain money from the Medicare and Medicaid programs by billing for evaluations and services and providing DME, namely power wheelchairs and accessories as if they were medically required, when, in truth and in fact, as the defendant well knew they were not.

Scheme to Defraud

3. It was a part of the scheme and artifice to defraud that defendant would and did submit and cause to be submitted claims to the Medicare and Medicaid programs which were false or fraudulent in numerous ways including the following:

- a. the beneficiary's medical condition was such that without the use of a power wheelchair, the beneficiary would otherwise be bed or wheelchair-confined;
- b. the beneficiary's medical condition rendered him or her incapable of operating a manual wheelchair; and
- c. the beneficiary suffered from a neurologic or muscular disease or condition that resulted in severe weakness of the upper extremities.

Health Care Fraud

4. Beginning in or about October 2000, and continuing thereafter to in or about May 2003, in the Houston Division of the Southern District of Texas, the defendant,

LEWIS GOTTLIEB

did knowingly and willfully execute and attempt to execute a scheme and artifice to defraud a health care benefit program and to obtain by means of material, false and fraudulent pretenses, representations, and promises, any of the money and property owned by, and under the custody and control of, a health care benefit program in connection with the authorization and approval of beneficiaries to receive a power wheelchair in the amounts as set out in the counts below:

Ct.	Patient Medicare Number	Claim Number	Date of Service	Amount Billed	False Claim
2	0558D	452802179555610 200219369250218	06/18/02	\$200.00	Unlawful Referral Medically Unnecessary

3	7109A	452802302422080 452802296243870	10/15/02	\$375.00	Unlawful Referral Medically Unnecessary
4	1650A	452202312750380	11/05/02	\$625.00	Unlawful Referral Medically Unnecessary
5	1463D	452802312005050	11/06/02	\$475.00	Unlawful Referral Medically Unnecessary

In violation of Title 18 United States Code, Section 1347.

COUNTS SIX THROUGH NINE
(Anti-Kickback statute – receipt)
42 U.S.C. §1320a-7b(b)(1)(A)

1. On or about the dates alleged in the counts below, in the Houston Division of the Southern District of Texas and elsewhere, the defendant

LEWIS GOTTLIEB

knowingly, intentionally and willfully solicited and received remuneration, including a kickback, bribe and rebate, directly and indirectly, overtly and covertly, in cash and in-kind to induce the referral of Medicare beneficiaries for the furnishing and arranging for the furnishing of any item or service for which payment may be made in whole and in part under a Federal health care program; that is, the defendant received remuneration from a DME company listed below for Medicare patient referrals and signing a CMN authorizing and approving a patient to receive a power wheelchair:

Ct.	DME Company	Patient Medicare Number	Date	Amount
6	Access Medical Supply	0558D	06/18/02	\$200
7	Senior's Comfort Care Medical Supply	7109A	10/15/02	\$200
8	Thurman Family Medical Supply	1650A	11/05/02	\$200
9	1 st Choice Medical Equipment & Supply	1463D	11/06/02	\$200

In violation of Title 42, United States Code, Section 1320a-7b(b)(1)(A).

NOTICE OF CRIMINAL FORFEITURE

Pursuant to Title 18, United States Code, Section 982(a)(7), as a result of the commission of a violation of 18 U.S.C. §§ 1347 and 371, notice is given that defendant, **LEWIS GOTTLIEB**, shall forfeit all property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of a Federal health care offense; and

Pursuant to Title 28, United States Code, Section 2461(c), and Title 18, United States Code, Section 981(a)(1)(C), the United States gives notice that defendant, **LEWIS GOTTLIEB**, shall forfeit all property which constitutes or is derived from proceeds traceable to a violation of 42 U.S.C. § 1320, including, but not limited to the following property:

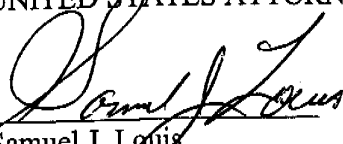
1. approximately \$32,000,000 United States Dollars; and
2. all funds on deposit in Wells Fargo Bank Account numbers, 2045133937 and 2407914015 in the name of LEWIS GOTTLIEB.

In the event that the property which is subject to forfeiture to the United States, as a result of any act or omission of the defendant:

- (1) cannot be located upon exercise of due diligence;
- (2) has been placed beyond the jurisdiction of the Court;
- (3) has been transferred or sold to, or deposited with
a third party;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States to seek forfeiture of any other property of the defendant up to the value of such property, pursuant to Title 21 United States Code, Section 853(p), made applicable to these offenses by Title 18, United States Code, Section 982(b)(1).

MICHAEL T. SHELBY
UNITED STATES ATTORNEY

by 
Samuel J. Louis
Assistant United States Attorney